

Below is an opinion of the court.

  
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PETER C. MCKITTRICK  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case
	)	No. 16-33185-pcm7
PETER SZANTO	)	
	)	
Debtor.	)	
	)	
UNITED STATES TRUSTEE,	)	Adversary No. 18-3022-pcm
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MEMORANDUM OPINION <sup>1</sup>
PETER SZANTO,	)	
	)	
Defendant.	)	

The United States Trustee (Plaintiff or the UST) filed a complaint to deny Peter Szanto (Debtor) a discharge under 11 U.S.C. § 727.<sup>2</sup> 18-3022-pcm, Doc. 1. For the reasons set forth below, Debtor will be denied a discharge.

<sup>1</sup> This disposition is specific to this case and is not intended for publication or to have a controlling effect on other cases. It may, however, be cited for whatever persuasive value it may have.

<sup>2</sup> Unless otherwise noted, all references to chapters, sections and rules are to the Bankruptcy Code, 11 U.S.C. § 101, et seq., and to the Federal Rules of Bankruptcy Procedure, Rules 1001, et seq.

Procedural Background

Plaintiff commenced this adversary proceeding approximately two years ago, in early March of 2018. Adv. P. 18-3022-pcm, Doc. 1 (the Complaint). Debtor filed a document in response to the Complaint that, among other things, included allegations against additional individuals. Adv. P. 18-3022-pcm, Doc. 32. Because of certain irregularities with that document, the Court entered an order, Adv. P. 18-3022-pcm, Doc. 41, in which, among other things, it told Debtor that if he wanted to join additional defendants, "he must do so in accordance with the requirements of the Fed. R. Civ. P. regarding joinder, rather than merely including allegations against third parties and serving his answer on said parties." Id. at p. 3.

Debtor eventually filed a document captioned First Amended 1) Statement of Unwillingness to Consent to Entry of Final Orders 2) Demand for Jury Trial 3) Affirmative Defenses 4) Admissions 4) [sic] General and Specific Denials 5) Answer 6) Counterclaim (the Answer). Adv. P. 18-3022-pcm, Doc. 53. Debtor purported to assert four counterclaims against Plaintiff, Nicholas Henderson and Marissa Henderson in the Answer. On the same day he filed the Answer, Debtor filed a Notice of Joinder (the Notice), in which he purported to join the Nicholas Henderson and Marissa Henderson as indispensable parties. Adv. P. 18-3022-pcm, Doc. 54. The Court entered an Order Re Notice of Joinder, Adv. P. 18-3022-pcm, Doc. 56. In that order, the Court found that (1) filing a mere notice of joinder was insufficient, (2) if the Notice was deemed a motion, it was untimely and (3) if the Notice was deemed a timely motion, it would be denied in its merits. Id.

1       A few months later, I issued a letter ruling that addressed a motion  
2 filed by Plaintiff to dismiss the counterclaims asserted against the UST,  
3 and Debtor's demand for a jury trial and statement in the Answer that he  
4 did not consent to entry of final judgment. Adv. P. 18-3022-pcm, Doc.  
5 139. I concluded that the Court lacked subject matter jurisdiction over  
6 the counterclaims against Plaintiff based on sovereign immunity, there is  
7 no right to a jury trial in a § 727 action, and Debtor's refusal to  
8 consent was irrelevant because the Court has jurisdiction and  
9 Constitutional authority to enter final judgment in this adversary  
10 proceeding. Id. Thereafter, the Court entered an order (1) dismissing  
11 Debtor's counterclaims against Plaintiff, (2) striking the jury demand  
12 and (3) stating that it "has the jurisdiction and Constitutional  
13 authority to enter final judgment in this matter." Adv. P. 18-3022-pcm,  
14 Doc. 140.

15       On January 21, 2020, I held a final pretrial conference (the Final  
16 PTC) at which I ruled on various pretrial motions filed by the parties.  
17 An audio recording of the Final PTC appears on the adversary proceeding  
18 docket as docket numbers 274 and 275. See also Adv. P. 18-3022-pcm, Doc.  
19 276 (Order Regarding Pretrial Motions). Debtor failed to appear at the  
20 Final PTC. On January 28, 2020, Debtor filed a motion to stay the trial  
21 on the basis that the Court never provided him with notice of the Final  
22 PTC. Adv. P. 18-3022-pcm, Doc. 280. That contention is demonstrably  
23 false, for the reasons stated in the Court's order dated January 29,  
24 2020. See Adv. P. 18-3022-pcm, Doc. 282.

25       At the time the trial in this adversary proceeding commenced, the  
26 only claims remaining to be tried were Plaintiff's claims to deny Debtor

1 a discharge under § 727. Although the Complaint asserts eleven claims  
2 for relief, Plaintiff stated in its trial brief that it would pursue only  
3 six (its second, fourth, fifth, sixth, tenth and eleventh claims for  
4 relief). See Adv. P. 18-3022-pcm, Doc. 250, p. 1, n. 1. For the reasons  
5 explained below, I find that Plaintiff has met its burden of proof on  
6 each claim for relief upon which it relies.

7 There are numerous grounds to deny Debtor a discharge in addition to  
8 those I address below. To the extent I do not discuss conduct relied on  
9 by Plaintiff at trial, that does not mean that the UST failed to meet its  
10 burden of showing that Debtor's discharge should be denied based on that  
11 conduct. Debtor is a vexatious litigant and his conduct in the main  
12 bankruptcy case and numerous adversary proceedings, including this one,  
13 has put an immense burden on judicial and other public resources.  
14 Considerations of judicial economy prevent me from making detailed  
15 findings on every factual basis established by Plaintiff for denying  
16 Debtor's discharge.

#### 17 Analysis

18 Section 727 is construed liberally in favor of a debtor and strictly  
19 against the party objecting to discharge. In re Beauchamp, 236 B.R. 727,  
20 730 (9th Cir. BAP 1999). The burden is on the plaintiff to show, by a  
21 preponderance of the evidence, that the requirements of § 727 are met.  
22 Id.; Fed. R. Bankr. P. 4005. Section 727's purpose is to make the  
23 privilege of discharge dependent on a true presentation of the debtor's  
24 financial affairs. In re Cox, 41 F.3d 1294, 1296 (9th Cir. 1994).  
25 "While the burden of persuasion rests at all times on the [plaintiff]  
26 objecting to the discharge, it is axiomatic that the debtor cannot

1 prevail if he fails to offer credible evidence after the [plaintiff]  
2 makes a prima facie case." In re Devers, 759 F.2d 751, 754 (9th Cir.  
3 1985). See also In re Hansen, 368 B.R. 868, 876 (9th Cir. BAP 2007) (a  
4 debtor's failure to offer a satisfactory explanation is a sufficient  
5 ground for denial of discharge); 2 Barry Russell, BANKRUPTCY EVIDENCE  
6 MANUAL § 301.2 (2018) ("The failure of a party to provide evidence  
7 peculiarly available to that party supports the inference that the truth  
8 would be damaging to that party.").

9 I. Section 727(a)(2)(B)<sup>3</sup> - Plaintiff's Second Claim for Relief

10 To deny a debtor a discharge under section 727(a)(2)(B), the  
11 plaintiff must show that:

- 12 (1) debtor transferred or concealed property;  
13 (2) the property was property of the estate;  
14 (3) the transfer or concealment occurred after the petition was  
15 filed; and  
16 (4) debtor acted with the intent to hinder, delay or defraud a  
17 creditor or an officer of the estate.

18 Devers, 759 F.2d at 753-54. The intent to hinder, delay or defraud must  
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20 <sup>3</sup> Section 727(a)(2)(B) provides that the Court shall grant a  
21 discharge unless:

22 (2) the debtor, with intent to hinder, delay, or defraud a creditor  
23 or an officer of the estate charged with custody of property under  
24 this title, has transferred, removed, destroyed, mutilated, or  
25 concealed, or has permitted to be transferred, removed, destroyed,  
26 mutilated, or concealed—

\* \* \* \* \*

(B) property of the estate, after the date of the filing of the  
petition[.]

1 be actual, as opposed to constructive, intent. However, intent may be  
2 inferred from the actions of the debtor and the surrounding  
3 circumstances. In re Woodfield, 978 F.2d 516, 518 (9th Cir. 1992);  
4 Devers, 759 F.2d at 753-54.

5 Plaintiff argues that Debtor's discharge should be denied under  
6 § 727(a)(2)(B) because Debtor (1) failed to disclose multiple financial  
7 accounts in his original bankruptcy schedules and statement of financial  
8 affairs (SOFA) and (2) created a new, undisclosed limited liability  
9 corporation (LLC) postpetition and secretly transferred estate assets to  
10 that LLC. Debtor's discharge will be denied on both grounds.

11 A. Undisclosed Bank Accounts

12 Debtor filed a voluntary chapter 11 petition on August 16, 2016.  
13 Case No. 16-33185-pcm7, Doc. 2. He filed his bankruptcy schedules and  
14 SOFA a couple of weeks later, on August 30, 2016. Exhibit 1.<sup>4</sup> Debtor's  
15 original schedules disclosed two Union Bank accounts that he used as his  
16 chapter 11 debtor in possession (DIP) accounts and an E\*Trade account.  
17 Id. at p. 7.<sup>5</sup>

18 On September 20, 2017, the United States Department of Justice's Tax  
19 Division filed a Motion to Convert or Appoint a Trustee (the Motion to  
20 Convert). Case No. 16-33185-pcm7, Doc. 185. On December 5, 2017, I  
21 entered an order converting this case to chapter 7 (the Conversion Order)  
22 based, in part, on Debtor's failure to disclose estate assets. Exhibit  
23 9.

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24  
25  
26 <sup>4</sup> All references to an exhibit are to documents offered and  
admitted into evidence at trial.

<sup>5</sup> Debtor's DIP accounts with Union Bank ended in 2572 and 2580.  
Exhibit 26, p 25.

1 In the conversion proceeding, I found that Debtor failed to disclose  
2 numerous financial accounts, including the following:

3 1. **Bank of America Account Ending in 2779.** Exhibit 26, p. 20. See  
4 also Exhibit 2, p. 1. The balance in this account on the petition  
5 date was approximately \$1,300. Id. at pp. 1-3.

6 2. **Ford Interest Advantage Account Ending in 3843.** Exhibit 26, p.  
7 22. See also Exhibit 2, p. 11. The balance in this account on the  
8 petition date was approximately \$66,000. Id.

9 3. **HSBC Account Ending in 7256.** Exhibit 26, p. 24. See also  
10 Exhibit 2, p. 13. The balance in this account on the petition date  
11 was approximately \$326,000. Id.

12 4. **Union Bank Account Ending in 8286.** Exhibit 26, p. 25. See also  
13 Exhibit 2, p. 23. The balance in this account on the petition date  
14 was approximately \$102,000. Id.<sup>6</sup>

15 5. **Cathay Bank Account Ending in 7244.** Exhibit 26, p. 25. See  
16 also Exhibit 2, p. 9. The balance in this account on the petition  
17 date was approximately \$166. Id.

18 (The Undisclosed Accounts).<sup>7</sup> Debtor's failure to list the Undisclosed  
19 Accounts in his bankruptcy schedules amounts to concealment within the  
20 meaning of § 727(a)(2)(B).

21 My finding in the conversion proceeding that Debtor concealed the  
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23 <sup>6</sup> In the conversion proceeding, I found that the Union Bank  
24 account ending in 8286 had approximately \$50,000 on the petition date.  
25 That appears to have been an error. Instead, it appears from Exhibit 2  
that the correct balance on the petition date was over \$100,000.

26 <sup>7</sup> In the conversion proceeding, I found that Debtor failed to  
disclose at least seven additional accounts. See Exhibit 26, pp. 20-25.  
For simplicity's sake, I have omitted from this discussion accounts for  
which the balance on the petition date is not clear from the record and  
those that had a balance of less than \$100 on the petition date.

1 Undisclosed Accounts, and other findings that I will discuss below, apply  
2 in this adversary proceeding by virtue of the doctrine of collateral  
3 estoppel, also known as issue preclusion.<sup>8</sup> Issue preclusion forecloses  
4 relitigation of an issue if (1) the issue is identical to the one raised  
5 in the prior litigation; (2) the issue was actually litigated in the  
6 prior litigation; and (3) the determination of the issue in the prior  
7 litigation was a critical and necessary part of the judgment in the  
8 earlier action. Clark v. Bear Stearns & Co., 966 F.2d 1318, 1320 (9th  
9 Cir. 1992).

10 The Undisclosed Accounts were property of the estate. With certain  
11 exceptions not applicable here, property of the estate is comprised of  
12 "all legal or equitable interests" a debtor has in property as of the  
13 petition date. § 541(a)(1). Property of the estate also includes:

14 All interests of the debtor and the debtor's spouse in community  
15 property as of the commencement of the case that is-

16 (A) Under the sole, equal, or joint management and control of  
the debtor; or

17 (B) liable for an allowable claim against the debtor, or for  
18 both an allowable claim against the debtor and an allowable  
claim against the debtor's spouse, to the extent that such  
19 interest is so liable.

20 § 541(a)(2). The Ford Interest Advantage Account Ending in 3843 is a  
21 joint account owned by Debtor and his wife. Debtor's is the only name  
22 listed on the statements for the other Undisclosed Accounts. See Exhibit  
23 2. I previously found in the conversion proceeding that Debtor was

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25 <sup>8</sup> In any event, at trial, Plaintiff provided independent evidence  
26 of the Undisclosed Accounts discussed in this opinion. That evidence is  
compiled in Exhibit 2. In addition, Debtor admitted at his deposition in  
this matter that each of the Undisclosed Accounts was open on the  
petition date. See Exhibit 27, pp. 8-15.



1 required, but failed, to disclose the Undisclosed Accounts in his  
2 bankruptcy schedules because he because had a legal or equitable interest  
3 in each. I reaffirm that finding here.

4 Debtor concealed the Undisclosed Accounts after the petition date by  
5 failing to list them in his bankruptcy schedules and the monthly  
6 operating reports that he filed during his chapter 11 case. See Case No.  
7 16-33185-pcm7, Docs. 33, 42, 49, 63, 64, 72, 82, 98, 107, 124, 134, 165,  
8 197, 224, 277 (chapter 11 monthly operating reports signed by Debtor  
9 under penalty of perjury).

10 Finally, I find that Debtor acted with the intent to hinder, delay  
11 and defraud his creditors when he concealed the Undisclosed Accounts. In  
12 the conversion proceeding, I found that Debtor's misconduct in his  
13 chapter 11 case, specifically including concealment of the Undisclosed  
14 Accounts, was not the result of a long series of innocent mistakes, as  
15 Debtor continues to maintain. Instead, it was attributable to "a  
16 deliberate and concerted effort to withhold information" from his  
17 creditors and the UST. Exhibit 26, pp. 29-30. I reaffirm that finding  
18 here. The number of financial accounts concealed by Debtor and the  
19 amount of money involved "eliminate[s] any possible finding of mere  
20 negligence that could vitiate the inference of intent." Devers, 759  
21 F.2d at 754. Debtor's intent to hinder, delay and defraud his creditors  
22 is also demonstrated by the fact that he has litigated, in this court and  
23 others, virtually every third-party subpoena issued by parties in  
24 interest seeking to obtain information about Debtor's finances in general  
25 and the Undisclosed Accounts in particular. Debtor's vigorous efforts to  
26 prevent the disclosure of information about his finances evidences an

1 intent to hinder, delay and defraud within the meaning of § 727(a)(2)(B).

2 Debtor offered conflicting testimony at trial about the Undisclosed  
3 Accounts. He testified at one point that the Undisclosed Accounts are  
4 community property. However, he also testified that, although his name  
5 appears on each of the Undisclosed Accounts, he had no interest in those  
6 accounts on the petition date because they were, in fact, his wife's  
7 accounts. According to Debtor, a California state court had assigned  
8 them to his wife as some type of preliminary division of assets in an  
9 ongoing dissolution of marriage proceeding. Finally, Debtor also  
10 testified that his name appears on the accounts only because his wife  
11 designated him a "pay on death beneficiary" of the accounts. There are a  
12 multitude of problems with Debtor's arguments.

13 As a threshold matter, Debtor's arguments that the Undisclosed  
14 Accounts are (1) community property and (2) his wife's separate property  
15 can not be reconciled. Moreover, Debtor's testimony that the Undisclosed  
16 Accounts are community property is contrary to a sworn statement Debtor  
17 made at the inception of this case that he and his wife have never "had  
18 joint/community/shared or combined property of any type[.]" Exhibit 1, p.  
19 24. In any event, § 541 directs that community property is property of  
20 the bankruptcy estate. Debtor provided no evidence, other than his own  
21 testimony, which I do not find credible, that the California state court  
22 had assigned to his wife an ownership interest in the Undisclosed  
23 Accounts as of the petition date.<sup>9</sup> The bottom line is that, even if I

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24  
25 <sup>9</sup> Debtor offered one exhibit at trial. Exhibit A purports to be  
26 a docket sheet for a dissolution of marriage proceeding in California  
state court that remains open. Debtor did not provide this Court with  
any underlying case documents to support his contention that the  
California state court had assigned the Undisclosed Accounts to his wife  
(continued...)

1 accept as true Debtor's testimony about the Undisclosed Accounts, which I  
2 do not, those accounts were property of the estate because Debtor had  
3 either a legal or equitable interest in the Undisclosed Accounts on the  
4 petition date.

5 B. Postpetition Creation of New LLC and Transfer of Funds

6 Debtor formed a new business entity, the Peter Szanto LLC (the LLC),  
7 in August of 2017, approximately one year after he filed his chapter 11  
8 petition. Exhibit 15; Exhibit 26, p. 26 (making same finding in  
9 conversion proceeding). The LLC was property of Debtor's bankruptcy  
10 estate. § 1115(a)(1) (property of the estate in a chapter 11 case  
11 includes property debtor acquires after the petition date but before the  
12 case is closed, dismissed or converted).

13 Soon after he formed the LLC, Debtor opened an E\*Trade account  
14 ending in 5272 in the name of the LLC (the LLC E\*Trade Account) and  
15 transferred estate funds to the LLC. Exhibit 6; Exhibit 26, p. 26  
16 (making same finding in conversion proceeding). From late September to  
17 mid-October of 2017, Debtor transferred approximately \$367,000 in estate  
18 assets from one of his debtor in possession accounts to the LLC E\*Trade  
19 Account. Exhibits 5, 6. Debtor did not report the formation of the LLC  
20 in his August monthly operating report. Case No. 16-33185-pcm7, Doc.  
21 197. He also failed to report any of the transfers in his September and  
22 October 2017 monthly operating reports. Case No. 16-33185-pcm7, Docs.  
23 224 and 277.

24  
25 

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<sup>9</sup>(...continued)

26 on the petition date. Debtor testified at trial that the state court  
would not allow him to have any case documents until the dissolution case  
is concluded, even though he is a party to that case. Debtor's  
contention defies belief.

1 I find that Debtor acted with the intent to hinder, delay or defraud  
2 his creditors when he secretly created the LLC and then made undisclosed  
3 transfers of estate property to it. In the conversion proceeding, I  
4 found that Debtor's misconduct in his chapter 11 case, specifically  
5 including creating the LLC and making transfers of estate property to it,  
6 was not the result of a long series of innocent mistakes, as Debtor  
7 continues to maintain. Instead, it was attributable to "a deliberate and  
8 concerted effort to withhold information" from his creditors and the UST.  
9 Exhibit 26, p. 29-30. I reaffirm that finding here.

10 "Certain 'badges of fraud' strongly suggest that a transaction's  
11 purpose is to defraud creditors unless some other convincing explanation  
12 appears." Woodfield, 978 F.2d at 518. Badges of fraud include a close  
13 relationship between the debtor and the transferee, and a transfer in  
14 anticipation of a lawsuit. Id.

15 There is a close relationship between Debtor and the LLC. He formed  
16 the LLC and is the only member listed on the formation documents.  
17 Exhibit 15. Mr. Arnot, the former Chapter 7 trustee (Mr. Arnot or the  
18 Trustee) testified that Debtor is the only member of the LLC.<sup>10</sup>

19 The timing of the creation of the LLC is also suspicious. In April  
20 of 2017, the Court entered an order granting the IRS's motion pursuant to  
21 Rule 2004 to require Debtor to produce all statements for any financial  
22 account in which he had an interest.<sup>11</sup> Exhibit 26, p. 27. Debtor did

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24 <sup>10</sup> Mr. Arnot resigned as the chapter 7 trustee of this case on  
25 March 26, 2019. Candace Amborn serves as the current chapter 7 trustee.

26 <sup>11</sup> Rule 2004 provides, in pertinent part, that the court may order  
the examination of the debtor relating "to the acts, conduct, or property  
or to the liabilities and financial condition of the debtor, or to any  
matter which may affect the administration of the debtor's estate, or to  
(continued...)

1 not produce any statements for the Undisclosed Accounts in response to  
2 the Court's Rule 2004 Order. Id. It is likely that Debtor formed the  
3 LLC in response to investigations into his finances undertaken by the IRS  
4 and as an integral part of his plan to hide assets from his creditors.  
5 Moreover, the timing suggests that Debtor transferred estate funds to the  
6 LLC's E\*Trade Account in reaction to the IRS's filing of the Motion to  
7 Convert on September 20, 2017. Case No. 16-33185-pcm7, Doc. 185. Debtor  
8 commenced the transfers just a few days later.

9 Debtor has not offered any convincing explanation for the creation  
10 of, or transfers to, the LLC. Debtor claims that he formed the LLC  
11 because the Court and the IRS instructed him to do so. I made no such  
12 instruction, and Debtor has never provided any detail or evidence to  
13 substantiate his contention. Debtor stated at trial that he intended to  
14 disclose the transfers of estate funds to the LLC's E\*Trade Account, but  
15 was waiting until all assets of the estate had been transferred to make  
16 the disclosure. Debtor's explanations simply are not credible. Debtor  
17 was using the LLC in an attempt to hinder, delay and defraud his  
18 creditors.

19 For the reasons set forth above, Debtor will be denied a discharge  
20 under § 727(a)(2)(B).

21 II. Section 727(a)(4)(A)<sup>12</sup> - Plaintiff's Fourth, Fifth and Sixth Claims  
22 for Relief

23 To deny a debtor a discharge under § 727(a)(4)(A), the plaintiff

24 \_\_\_\_\_  
25 <sup>11</sup>(...continued)  
26 the debtor's right to a discharge."

<sup>12</sup> Section 727(a)(4)(A) provides that the court shall grant a  
debtor a discharge unless "the debtor knowingly and fraudulently, in or  
in connection with the case made a false oath or account[.]"

1 must show that "(1) the debtor made a false oath in connection with the  
2 case; (2) the oath related to a material fact; (3) the oath was made  
3 knowingly; and (4) the oath was made fraudulently." In re Roberts, 331  
4 B.R. 876, 882 (9th Cir. BAP 2005).

5 "A false oath may involve a false statement or omission in the  
6 debtor's schedules." In re Wills, 243 B.R. 58, 62 (9th Cir. BAP 1999).  
7 A statement in a monthly operating report also constitutes a statement  
8 under oath for purposes of § 727(a)(4)(A), In re McKinney, 2012 Bankr.  
9 LEXIS 1704, \*12 (Bankr. S.D. Ga. March 5, 2012), as does a debtor's sworn  
10 statement made at a Rule 341 meeting. In re Korte, 262 B.R. 464, 474  
11 (8th Cir. BAP 2001).

12 A statement is material if it "bears a relationship to the debtor's  
13 business transactions or estate, or concerns the discovery of assets,  
14 business dealings, or the existence and disposition of the debtor's  
15 property." Wills, 243 B.R. at 62 (citing In re Chalik, 748 F.2d 616, 618  
16 (11th Cir. 1984)). "A false statement or omission may be material even  
17 if it does not cause direct financial prejudice to creditors." Wills,  
18 243 B.R. at 63.

19 Fraudulent intent must be actual, not constructive, In re Jones, 175  
20 B.R. 994, 1002 (Bankr. E.D. Ark. 1994), but "is usually proven by  
21 circumstantial evidence or by inferences drawn from the debtor's  
22 conduct." In re Retz, 606 F.3d 1189, 1199 (9th Cir. 2010).

23 A. Plaintiff's Fourth Claim for Relief

24 Plaintiff alleges that Debtor should be denied a discharge under  
25 § 727(a)(4)(A) because he knowingly and fraudulently made false oaths in  
26 his bankruptcy schedules and SOFA relating to the Undisclosed Accounts

1 and a closely held business entity, the Yankee Trust Corporation. I  
2 agree.

3 1. The Undisclosed Accounts

4 Debtor made a false oath relating to a material fact when he failed  
5 to list the Undisclosed Accounts on Schedule A/B of his bankruptcy  
6 schedules.<sup>13</sup> See Exhibit 1, p. 7. As I discussed above, Debtor  
7 concealed the Undisclosed Accounts as part of a comprehensive scheme to  
8 withhold assets and information about those assets from his creditors and  
9 the UST. The omission of multiple financial accounts having material  
10 assets suggests that Debtor did not simply forget to include those  
11 accounts in his bankruptcy schedules. Debtor acted knowingly and  
12 fraudulently when he failed to list the Undisclosed Accounts on Schedule  
13 A/B.

14 2. The Yankee Trust Corporation

15 Debtor formed the Yankee Trust Corporation (the YTC) in 2014 and was  
16 its registered agent and a director. Exhibit 26, p. 19. He was also a  
17 30 percent% owner at the time of formation. Exhibit 24, pp. 116-17.  
18 Although Debtor claims that he transferred his ownership interest in the  
19 YTC to his family effective January 1, 2015, he remained a director on  
20 the date he filed his bankruptcy petition.<sup>14</sup> Id. at p. 145. Debtor  
21 testified that he formed the YTC to benefit his family and understands it  
22 to be a testamentary device under Massachusetts law. As such, Debtor

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23  
24 <sup>13</sup> Schedule A/B is the bankruptcy document on which a debtor must  
25 disclose all property in which the debtor has a legal or equitable  
interest.

26 <sup>14</sup> Debtor also admitted under oath at the hearing on the Motion to  
Convert that, in January of 2016, he transferred \$39,000 to the YTC and  
failed to disclose that transfer in his bankruptcy schedules. See  
Exhibit 25, pp. 10-11.

1 testified that there was always the possibility that the YTC could revert  
2 back to him.

3 Mr. Arnot testified that, despite Debtor's claim that he no longer  
4 had an ownership interest in the YTC on the petition date, Debtor made  
5 extensive use of YTC assets after he allegedly divested himself of an  
6 ownership interest, including during his chapter 11 case. Plaintiff's  
7 documentary evidence supports Mr. Arnot's testimony. See Exhibit 20.  
8 For example, in March of 2017, Debtor signed a check using approximately  
9 \$7,937 of YTC funds to pay his mortgage. Exhibit 20, p. 58. In 2017,  
10 Debtor made multiple cash withdrawals from one of YTC's account. See  
11 Exhibit 20, pp. 58, 60, 63, 66, 69. Debtor also used a YTC credit card  
12 to pay for personal expenses, such as his homeowner's insurance. See,  
13 e.g., Exhibit 20, p. 55. The address listed on YTC's credit card  
14 statement is Debtor's residence.

15 Debtor made multiple, material false oaths concerning the YTC in his  
16 bankruptcy schedules and SOFA. First, Debtor was at least a director of  
17 the YTC on the petition date. He was required, but failed, to report  
18 that interest in response to question 27 on the SOFA. See Exhibit 1, p.  
19 44. Given Debtor's extensive use of YTC assets, I do not believe that he  
20 in fact transferred his ownership interest in the YTC to his family in  
21 January of 2015. Thus, he made a false oath by failing to report that  
22 ownership interest on Schedule A/B in response to question 19. See  
23 Exhibit 1, p. 7. However, even if Debtor really did transfer his  
24 ownership interest in the YTC to his family, which I do not believe, he  
25 made a false oath when he failed to disclose that transfer in response to  
26 question 13 of the SOFA. See Exhibit 1, p. 39. Finally, Debtor



1 testified he believed that the YTC is a testamentary device under  
2 Massachusetts law that gives rise to a reversionary interest. If Debtor  
3 believed that to be true, then he was obligated, but failed, to disclose  
4 that equitable interest in response to question 25 of Schedule A/B. See  
5 Exhibit 1, p. 9.

6 Debtor's testimony at trial in this matter, including about the YTC,  
7 was inconsistent, evasive and equivocal. On one hand, Debtor testified  
8 that he did not make use of assets held in the name of the YTC and that  
9 someone else, either his wife or one of his children, was responsible for  
10 his apparent use of those assets.<sup>15</sup> Later, Debtor appeared to admit that  
11 he made at least some of the transfers. He said he formed the YTC as a  
12 vehicle to teach his family about stock trading and when they had losses,  
13 he would "journal over money" to protect his family from financial  
14 losses. Debtor also testified that his failure to disclose his  
15 relationship to the YTC was simply the result of an innocent mistake and  
16 that no creditors had been harmed by the omission.

17 Debtor made the false oaths about the YTC knowingly and  
18 fraudulently. I have carefully considered Debtor's testimony and  
19 conclude it is entitled to no weight insofar as he tries to lay blame on  
20 others. Debtor has never, including at trial in this matter, offered any

---

21 <sup>15</sup> The YTC credit card statement reflects a charge for a hotel in  
22 Portland, Oregon on September 21, 2016. Exhibit 20, p. 53. That is the  
23 same day the Court held the initial case management conference in  
24 Debtor's then new chapter 11 bankruptcy case. Debtor attended that  
25 hearing in person. Debtor disputed at trial that the hotel charge was  
26 for his benefit because he lived in Portland then. As evidence of that  
fact, Debtor points to his sworn statement in his bankruptcy petition  
that he lived in Portland when he filed his bankruptcy petition. I have  
long been skeptical that Debtor lived in Portland on the petition date.  
Suffice it to say that the fact that Debtor made a sworn statement to  
that effect does not make it true or lessen my skepticism about Debtor's  
residency.

1 corroborative evidence to support his frequent attempts to shift blame to  
2 others. A debtor's "failure to produce available explanatory or  
3 rebutting evidence when the circumstances attending the transfer are  
4 suspicious" is indicative of fraudulent intent. In re Titus, 75 B.R.  
5 256, 259 (Bankr. W.D. Mo. 1985). Debtor's failure to disclose his  
6 relationship with the YTC was not the result of an innocent mistake.  
7 Instead, Debtor concealed his relationship with the YTC because he wished  
8 to shelter assets nominally held in the name of the YTC from his  
9 creditors while, at the same time, retaining unfettered access to those  
10 funds for his own benefit. The administration of Debtor's chapter 7 case  
11 remains ongoing and it is far from clear that Debtor's actions have had  
12 no impact on his creditors. In any event, it is not necessary that a  
13 debtor's actions "succeed in harming creditors to warrant denial of  
14 discharge. . . ." In re Bernard, 96 F.3d 1279, 1281-82 (9th Cir. 1996).

15 Plaintiff has proved its case for denial of discharge under this  
16 claim.

17 B. Plaintiff's Fifth Claim for Relief

18 Plaintiff alleges that Debtor should be denied a discharge under  
19 § 727(a)(4)(A) because he knowingly and fraudulently made material false  
20 oaths during his chapter 11 case when he failed to disclose in his  
21 September and October 2017 monthly operating reports the transfers to the  
22 LLC discussed above in relation to Plaintiff's second claim for relief  
23 brought pursuant to § 727(a)(2)(B). I agree. My findings set forth  
24 above with regard to Plaintiff's second claim for relief support entering  
25 judgment against Debtor on Plaintiff's fifth claim for relief as well.

1 C. Plaintiff's Sixth Claim for Relief

2 Plaintiff alleges that Debtor should be denied a discharge under  
3 § 727(a)(4)(A) because he knowingly and fraudulently made a material  
4 false oath at the initial Rule 341 meeting. I agree.

5 Debtor admitted at trial that he testified under oath at his initial  
6 Rule 341 meeting that his bankruptcy schedules were true and correct.  
7 They were not close to being true and correct, for the many reasons  
8 discussed above.

9 Debtor made the false oath knowingly and fraudulently. Debtor  
10 clearly knew that his bankruptcy schedules were not true and correct when  
11 he testified at the Rule 341 meeting of creditors. The number and  
12 materiality of the inaccuracies in Debtor's schedules eliminates the  
13 possibility of mere negligence or oversight. In re Khalil, 379 B.R. 163,  
14 175 (9th Cir. BAP 2007) (multiple omissions of material assets or  
15 information support an inference of fraud if the nature of the assets or  
16 transactions suggests that the debtor was aware of them at the time of  
17 preparing the schedules and that there was something about the assets or  
18 transactions which, because of their size or nature, a debtor might want  
19 to conceal). In addition, Debtor is no ordinary pro se debtor. This is  
20 Debtor's third bankruptcy case, and he testified that he has a masters  
21 degree in business administration with a specialty in accounting and a  
22 law degree.

23 For the reasons set forth above, Debtor will be denied a discharge  
24 under § 727(a)(4)(A).  
25  
26

1 III. Section 727(a) (6) (A)<sup>16</sup> - Eleventh Claim for Relief

2 Under this subsection of § 727(a), the plaintiff must prove "that  
3 the debtor (a) was aware of the order; and (b) willfully or intentionally  
4 refused to obey the order (i.e. something more than a mere failure to  
5 obey the order through inadvertency, mistake or inability to comply)."  
6 In re Clark, 525 B.R. 442, 463 (Bankr. D. Idaho 2015). A discharge will  
7 not be denied when the debtor's failure to comply with a court order is  
8 because of inadvertence, inability or mistake. The debtor's disobedience  
9 must have been intentional. In re Jarrell, 129 B.R. 29, 33 (Bankr. D.  
10 Del. 1991); In re Dowell, 61 B.R. 75, 78 (Bankr. W.D. Mo. 1986). Once  
11 the plaintiff has proved that the debtor violated a lawful order of the  
12 court, the burden shifts to the debtor to prove that he did not commit an  
13 objectionable act. In re Reavis, 92 B.R. 380, 383 (Bankr. W.D. Mo.  
14 1988).

15 Plaintiff argues that Debtor should be denied a discharge under  
16 § 727(a) (6) (A) because he refused to obey three separate orders of the  
17 Court. I agree.

18 A. The Court's Two Orders Concerning Conversion

19 The evidentiary hearing on the Motion to Convert commenced on  
20 Wednesday, November 29, 2017. Exhibit 24, p. 1. Debtor attended that  
21 hearing in person. Id. At the end of that day, the UST made an oral

22  
23 <sup>16</sup> Section 727(a) (6) (A) provides that the court shall grant the  
debtor a discharge unless

24 (6) the debtor has refused, in the case—

25 (A) to obey any lawful order of the court, other than an order  
26 to respond to a material question or to testify[.]

An order is lawful if it is issued by a court with subject matter and  
personal jurisdiction. Maness v. Meyers, 419 U.S. 449, 459 (1975).

1 motion to restrain Debtor from transferring estate property pending a  
2 decision on the Motion to Convert. Id. at p. 246. A long discussion  
3 ensued on the topic. Id. at pp. 246-56. Debtor voluntarily and  
4 repeatedly agreed to entry of an order restricting him from transferring  
5 funds among his various accounts or to third parties. Id. at pp. 247-48,  
6 252, 254. I instructed the UST to submit an order, but made it clear  
7 that the restriction on transfers was effective immediately. Id. at 251.  
8 Debtor also stated, repeatedly, that he had already stopped all automatic  
9 transfers of funds:

10 THE COURT: And if you're trading, you know, Cisco for Intel, that's  
11 fine. It's not fine to be transferring money to HSBC or to -- and  
12 to the extent that's happening automatically, which I have my  
question as to whether it would, if it's happening automatically  
where --

13 MR. SZANTO: No, no, no. And -- and that's -- that -- that's -

14 THE COURT: -- E\*TRADE's just sending money to HSBC -

15 MR. SZANTO: What's the whole -

16 THE COURT: -- that needs to stop.

17 MR. SZANTO: That, that's the whole point of -- Your Honor, that's  
18 the whole point of what I've tried to demonstrate here today, that,  
19 yes, they've discovered things that I was doing that appear to be  
20 improper. I've offered my explanation and all of the things that  
21 were questionable, that were not being reported properly, I've taken  
22 steps to stop. One of the problems with the E\*TRADE was I had  
dozens of accounts. There were dozens of accounts that were special  
purpose for very limited --

23 THE COURT: All right. Well, I'm -- my point is that I want to be  
24 sure that money's not being transferred --

25 MR. SZANTO: Of course. Of course.

26 THE COURT: -- and if there's some way it's happening automatically  
to HSBC, that needs to stop.

MR. SZANTO: Of course. Of course. And it has.

THE COURT: Okay.

MR. SZANTO: It -- it -- it stopped as soon as --

1 THE COURT: Great.

2 MR. SZANTO: -- it was brought to my attention about how it looked.

3 MS. McCLURG: So -

4 MR. SZANTO: So that, that's already stopped. There was -

5 MS. McCLURG: Here's what I plan --

6 MR. SZANTO: -- nothing like that.

7 Id. at pp. 252-254.

8 The next day, on November 30, 2017, the Court entered an Order  
9 Limiting Transfer of Estate Property (the No-Transfer Order). Exhibit 8.  
10 With two exceptions not relevant here, the No-Transfer Order provides:

11 The debtor and all entities the debtor directly or indirectly owns,  
12 controls, or uses to conduct business shall not transfer or cause  
13 the transfer of any property of the estate, including without  
14 limitation all funds held in bank, investment, or other financial  
15 accounts, to any other persons or entities or between such  
16 accounts[.]

15 Exhibit 8, p. 1.

16 The evidentiary hearing on the Motion to Convert resumed on Monday,  
17 December 4, 2017. Exhibit 25, p. 1. Debtor did not appear in person as  
18 expected, but I permitted him to appear via telephone. Id. at p. 4. At  
19 the end of that hearing, I announced that I would rule on the Motion to  
20 Convert the next day. Id. at p. 100. The UST responded that it had  
21 prepared a draft order for the Court in the event I decided to grant the  
22 Motion to Convert, which I ultimately did, and that Debtor should  
23 understand that the UST would ask that any conversion order immediately  
24 freeze, and allow the newly appointed chapter 7 trustee to exercise  
25 authority over, all of Debtor's financial accounts. Id. at pp. 99-100.  
26 At my instruction, immediately after the December 4 hearing adjourned,

1 the UST submitted to the Court and emailed to Debtor a draft form of  
2 order. Case No. 16-33185-pcm7, Doc. 274.

3 The next day, I made extensive findings on the record, see Exhibit  
4 26, and entered the Conversion Order. The material terms of the  
5 Conversion Order are consistent with both the discussion that took place  
6 on the record on December 4 and with the UST's draft order. The  
7 Conversion Order provides, in part:

8 4. The debtor shall not use any property of the bankruptcy estate  
9 as defined in 11 U.S.C. §§ 541 and 1115, including without  
10 limitation all monies, funds, investments, and/or securities held  
11 or titled in the name(s) of the debtor or Peter Szanto LLC, Peter  
Szanto Company, Portland Trust Corp, and New Tahoe Corporation  
(collectively the "Related Entities").

12 5. By December 19, 2017, the debtor must provide the Chapter 7  
Trustee with the following:

13 \* \* \* \* \*

14 b. An itemized accounting with documentation for all sums  
15 transferred during the chapter 11 to those entities owned  
16 and/or controlled by the debtor, including but not limited to  
the Related Entities;

17 c. Current account statements for all checking, savings and  
18 other financial accounts, including E-trade, in the debtor's  
19 name or the name(s) of the Related Entities and any other  
account in which the debtor owns and/or controls directly or  
indirectly; and

20 \* \* \* \* \*

21 9. The debtor shall cooperate with the Chapter 7 Trustee as  
22 necessary to enable the Chapter 7 Trustee to perform the Chapter 7  
Trustee's duties under United States Code Title 11.

23 10. The debtor shall surrender to the Chapter 7 Trustee all property  
24 of the estate and any recorded information, including books,  
documents, records, and papers relating to property of the estate.

25 Exhibit 9.

26 There is no question that Debtor was aware of the No-Transfer and

1 Conversion Orders. Debtor willfully and intentionally refused to obey  
2 those two orders in multiple ways.

3 Mr. Arnot testified that Debtor never provided him with the itemized  
4 accounting and financial statements required under paragraphs 5(b) and  
5 5(c) of the Conversion Order and did not turnover to him all property of  
6 the estate as required by paragraph 10. Debtor's response is two-fold.

7 First, Debtor claims to have no financial account statements,  
8 including for the period of time his chapter 11 case was pending. I do  
9 not believe Debtor and, even if I did believe him, that would in itself  
10 likely be grounds to deny his discharge under § 727(a)(3).<sup>17</sup> Second,  
11 Debtor argued that he was excused from complying with the Conversion  
12 Order because the chapter 7 trustee could have obtained the documents via

---

13  
14 <sup>17</sup> Section 727(a)(3) provides that a debtor shall be granted a  
15 discharge unless, among other things, the debtor has

16 concealed, destroyed . . . or failed to keep or preserve any  
17 recorded information, including books, documents, records, and  
18 papers, from which the debtor's financial condition or business  
19 transactions might be ascertained, unless such act or failure to act  
20 was justified under all the circumstances of the case[.]

21 The debtor's justification will be measured against what a reasonable  
22 person would do under similar circumstances and will be evaluated in  
23 light of the education, experience and sophistication of the debtor, the  
24 nature and extent of the debtor's business, and the amount of credit  
25 extended to the debtor. Meridian Bank v. Alten, 958 F.2d 1226, 1231 (3d  
26 Cir. 1992). "[W]hen a debtor owns and controls numerous business  
entities and engages in substantial financial transactions, the complete  
absence of recorded information related to those entities and  
transactions establishes a prima facie violation of 11 U.S.C. §  
727(a)(3)." In re Caneva, 550 F.3d 755, 762 (9th Cir. 2008).

25 It is inconceivable that Debtor's claimed failure to have even a  
26 single financial statement to provide to the Trustee could be justified  
under the circumstances of this case. Plaintiff alleged that Debtor  
should be denied a discharge under § 727(a)(3) in its fourth claim for  
relief. However, Plaintiff indicated in its trial brief that it would  
not pursue its § 727(a)(3) claim at trial.



1 other means. Specifically, Debtor maintains that the Trustee should have  
2 subpoenaed the relevant documents directly from the pertinent financial  
3 institutions. Debtor's argument is completely without merit and  
4 indicative of his ongoing bad faith and vexatious abuse of the bankruptcy  
5 system.

6 The Conversion Order clearly requires Debtor to provide the Trustee  
7 with the specified documents. That the Trustee *arguably* could have  
8 obtained the documents from other sources is beside the point and does  
9 not excuse Debtor's noncompliance. Indeed, Debtor would have been  
10 obliged to provide the Trustee with the specified information upon the  
11 Trustee's request even if the Conversion Order had not specifically  
12 required it. See Rule 4002 (requiring a debtor to cooperate with a  
13 trustee's administration of the bankruptcy estate). "[C]omplete  
14 disclosure is the touchstone in a bankruptcy case." In re Bernard, 99  
15 B.R. 563, 570 (Bankr. S.D.N.Y. 1989). Neither a chapter 7 trustee nor a  
16 debtor's creditors "should be required to engage in a laborious [and  
17 expensive] tug-of-war to drag the simple truth into the glare of  
18 daylight." In re Tully, 818 F.2d 106, 110 (1st Cir. 1987). Debtor has  
19 fallen far short of providing complete disclosure, and his failure to do  
20 so is attributable to a deliberate and concerted effort to withhold  
21 information he is obligated to disclose.<sup>18</sup>

---

22  
23 <sup>18</sup> Section 727(a)(4)(D) provides that the court shall grant the  
debtor a discharge unless

24 (4) the debtor knowingly and fraudulently, in or in connection with  
25 the case—

26 \* \* \* \*

(D) withheld from an officer of the estate entitled to  
(continued...)

1 Mr. Arnot further testified, in extensive detail, that Debtor  
2 willfully and intentionally violated the No-Transfer and Conversion  
3 Orders by making multiple transfers of substantial funds from December 1,  
4 2017 - December 7, 2017.<sup>19</sup> I find that those transfers provide multiple,  
5 independent and additional grounds upon which to deny Debtor a discharge  
6 under § 727(a)(6)(A).

7 For example, from December 1 - December 5, 2017, Debtor made three  
8 transfers totaling almost \$278,000 from the LLC E\*Trade Account, the  
9 existence of which he concealed during his chapter 11 case, to an HSBC  
10 account ending in 9269 (the HSBC 9269 Account). The HSBC 9269 Account is  
11 one of the many accounts I found Debtor failed to disclose during the  
12 conversion proceeding. See Exhibit 26, p. 23. Debtor admitted under  
13 oath at the conversion hearing that the HSBC 9269 Account was open on the  
14 petition date, had funds, and that no one else had access to the  
15 account.<sup>20</sup> Exhibit 24, pp. 186-87. Debtor testified at the conversion  
16 proceeding that he did not disclose that account because he did not  
17 intend to use it anymore. Id. at p. 187. As is clear now, Debtor used

---

18  
19 <sup>18</sup> (...continued)

20 possession under this title, any recorded information,  
21 including books, documents, records, and papers, relating to  
the debtor's property or financial affairs[.]

22 Plaintiff argues that Debtor should be denied a discharge under  
23 § 727(a)(4)(D) because, despite repeated requests, Debtor knowingly and  
24 fraudulently withheld from the Trustee the itemized accounting and  
financial statements required under paragraphs 5(b) and 5(c) of the  
Conversion Order. I agree.

25 <sup>19</sup> In addition to Mr. Arnot's detailed testimony, the transfers  
26 are documented in Exhibits 3 and 19.

<sup>20</sup> The HSBC 9269 Account is not included in the list of  
Undisclosed Accounts I discuss above because the account balance on the  
petition date is not clear from the record.

1 the HSBC 9269 Account to secretly move funds in an attempt to shield  
2 those funds from his creditors. Mr. Arnot testified to, and Plaintiff  
3 provided documentary evidence of, numerous other transfers in violation  
4 of the No-Transfer and Conversion Orders, including various global  
5 transfers.<sup>21</sup>

6 In response, Debtor claims that he did not violate the No-Transfer  
7 and Conversion Orders because he did not make the transfers. Debtor  
8 claims that the transfers all happened automatically in accordance with  
9 his proprietary trading software instructions because of the Trustee's  
10 alleged failure to properly monitor Debtor's accounts following entry of  
11 the Conversion Order. There are so many problems with Debtor's argument  
12 that it is difficult to know where to begin.

13 First, as is detailed above, Debtor repeatedly stated at the  
14 November 29, 2019, conversion hearing that he had already stopped all  
15 automatic transfers in his accounts. In any event, I do not believe that  
16 the transfers resulted automatically from preexisting trading  
17 instructions put in place by Debtor. This is not the first time that  
18 Debtor has made such a claim, but he has never provided any independent  
19 corroborative proof of the existence of such software. In fact, Mr.  
20 Arnot testified he asked Debtor to provide him with a thumb drive that  
21 contained the program, but Debtor refused to comply with that request.<sup>22</sup>

---

22  
23 <sup>21</sup> Mr. Arnot testified at length and in detail at trial that  
24 Debtor made global transfers of estate assets to HSBC Australia and  
25 Singapore in violation of the No-Transfer and Conversion Orders. Those  
26 transfers are documented in Exhibit 19. In addition, Debtor made two  
undisclosed global transfers of almost \$100,000 each in June of 2017,  
approximately six months before entry of the Conversion Order. Exhibit  
26, p. 26.

<sup>22</sup> If the trading program exists, which I do not believe it does,  
(continued...)

1 Debtor willfully and intentionally violated the No-Transfer and  
2 Conversion Orders when he initiated the transfers. Finally, I have  
3 already addressed and rejected, multiple times in this bankruptcy case,  
4 Debtor's claim that Mr. Arnot mismanaged estate assets. In any event,  
5 some of the transfers occurred before entry of the Conversion Order and  
6 cannot possibly be attributable to Mr. Arnot.

7 B. The Court's Contempt Order

8 In late July of 2018, the Trustee filed a motion to hold Debtor in  
9 contempt for violation of the Conversion Order (the Contempt Motion).  
10 Exhibit 17. The Trustee asserted that he had been unsuccessful in his  
11 attempts to obtain Debtor's cooperation with the recovery of  
12 approximately \$424,000 in estate assets that Debtor transferred to HSBC  
13 accounts in Australia and Singapore (the Foreign Accounts) shortly before  
14 and after entry of the Conversion Order. Id.

15 The Court held an evidentiary hearing and, on October 2, 2018, I  
16 entered an order granting the Contempt Motion (the Contempt Order).  
17 Exhibit 10. I found that Debtor's acts or omissions resulted in estate  
18 funds being transferred to the Foreign Accounts. Case No. 16-33185-pcm7,  
19 Doc. 651, p. 4. Although I declined at that time to determine whether  
20 Debtor made the transfers intentionally or whether they occurred  
21 automatically, I have explained above why I do not believe that the  
22 transfers that happened shortly before and after entry of the Conversion  
23 Order occurred automatically. However, it is not necessary to decide  
24 that question for purposes of ruling on this claim for relief because the  
25

---

26 <sup>22</sup> (...continued)

it is property of the estate that Debtor is required to turn over to the Trustee, regardless of whether Debtor considers it to be proprietary.

dispositive issue is Debtor's subsequent refusal to obey the Contempt Order's provisions requiring that he assist the Trustee in the Trustee's efforts to obtain information about and recover those funds.

The Contempt Order provides, in part:

IT IS FURTHER ORDERED that the debtor shall sign copies of the Authorization to Disclose Financial Records [the Release Form] directed to HSBC Bank, as modified, and the Account Fund Transfer Forms with HSBC Bank Singapore Ltd. and HSBC Bank Australia Ltd., attached hereto as Exhibit 1, and deliver those signed copies to the Trustee no later than October 12, 2018[.]

\* \* \* \* \*

IT IS FURTHER ORDERED that the debtor must surrender to the Trustee all funds that constitute property of the estate and take all actions and execute all such documents necessary to assist the Trustee in obtaining turnover of all property of the bankruptcy estate that was transferred to and/or on deposit with HSBC Bank Australia Ltd. and/or HSBC Bank Singapore Ltd. . . .

Exhibit 10, pp. 1-2. The Release Form authorizes HSBC Bank USA, Australia, and Singapore, and HSBC Foreign Exchange, to release account information to the Trustee and to turn over to the Trustee "all funds in all bank and/or financial accounts with your institution in [Debtor's] name solely, [or] jointly with another." Id. at p. 3.

Plaintiff argues that Debtor should be denied a discharge under § 727(a)(6)(A) because Debtor willfully and intentionally refused to obey the Contempt Order. I agree.<sup>23</sup>

---

<sup>23</sup> Plaintiff did not allege in the Complaint that Debtor's violation of the Contempt Order was a basis to deny his discharge, because the Complaint was filed before entry of the Contempt Order. However, Fed. R. Civ. P. 15, made applicable by Rule 7015, directs that "[w]hen an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings." Plaintiff argued in its trial brief that Debtor should be denied a discharge under § 727(a)(6)(A) for violating the Contempt Order and Debtor did not object at trial to the introduction of evidence on the topic. Therefore, the question was tried with

(continued...)

1 Debtor was aware of the Contempt Order and willfully and  
2 intentionally refused to comply with it. Mr. Arnot testified that Debtor  
3 refused to sign the Release Form and that, as a result, he was forced to  
4 hire special counsel in Singapore to assist with the Trustee's efforts to  
5 recover estate property.<sup>24</sup>

6 Debtor does not dispute that he has refused to sign the Release Form  
7 and admitted at trial that he has participated in every hearing before  
8 the court in Singapore, either in person or by phone, in opposition to  
9 the Trustee's efforts there. Debtor testified that he is justified in  
10 refusing to comply with the Contempt Order because the money in Singapore  
11 belongs to his wife, not to him. Debtor testified that the money came  
12 from his wife's Israeli military pension and was necessary to pay for a  
13 recent liver transplant his wife had in Singapore.

14 I am skeptical about the veracity of Debtor's representations  
15 concerning the nature of the funds in Singapore. Debtor has never  
16 provided any corroborative documentary or third-party testimonial  
17 evidence to support his representations. I have told Debtor numerous  
18 times that he does not represent, and may not advance claims on behalf  
19 of, his wife. See, e.g., Doc. 651, p. 3. I have also repeatedly assured  
20 Debtor that if any funds are turned over to the estate from the Foreign  
21 Accounts, it will not impact any right that his wife has under the  
22 Bankruptcy Code and applicable federal rules with regard to those funds.  
23 Id. Even if I were to accept as true Debtor's unsupported, self-serving  
24

---

25 <sup>23</sup> (...continued)  
26 Debtor's implied consent. 3 Moore's Federal Practice, § 15.18 (Matthew  
Bender 3d Ed.).

<sup>24</sup> Mr. Arnot testified that he may have recovered the Australian  
funds but not those in Singapore.

1 testimony that he did not comply with the Contempt Order because he  
2 feared the Trustee would seize funds necessary for Mrs. Szanto's medical  
3 care, which I do not, that is not a defense to the UST's claim in this  
4 matter. Debtor was still required to comply with the Contempt Order,  
5 because a lawful order must be obeyed unless and until it is reversed.  
6 Maness v. Meyers, 419 U.S. 449, 459 (1975). Debtor did not appeal the  
7 Contempt Order. An order of civil contempt issued in a main bankruptcy  
8 case, unlike in an adversary proceeding, is a final appealable order. In  
9 re Stasz, 387 B.R. 271, 272 (9th Cir. BAP 2008).

10 Under § 727(a)(6)(A), once the plaintiff has shown that the debtor  
11 violated a lawful order of the court, which the UST has done, the burden  
12 shifts to the debtor show why his discharge should not be denied. Debtor  
13 has not met that burden and his discharge will be denied under  
14 § 727(a)(6)(A) based on his wilful and intentional violation of the No-  
15 Transfer, Conversion, and Contempt Orders as detailed above.

#### 16 Conclusion

17 For the reasons set forth above, Debtor will be denied a discharge  
18 under § 727(a)(2)(B), (4)(A), (4)(D) and (6)(A). Counsel for Plaintiff  
19 should submit a judgment within 14 days of entry of this memorandum  
20 opinion.

21 ###

22 cc: Peter Szanto (via ECF)  
23 Martin L. Smith (via ECF)  
24  
25  
26